

§ 18.54

time the party's prehearing disclosures under § 18.50(c)(3) are due.

[80 FR 28785, May 19, 2015, as amended at 80 FR 37540, July 1, 2015]

§ 18.54 Stipulations about discovery procedure.

Unless the judge orders otherwise, the parties may stipulate that:

(a) A deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) Other procedures governing or limiting discovery be modified— but a stipulation extending the time for any form of discovery must have the judge's approval if it would interfere with the time set for completing discovery, for hearing a motion, or for hearing.

§ 18.55 Using depositions at hearings.

(a) *Using depositions*—(1) *In general.* If there is no objection, all or part of a deposition may be used at a hearing to the extent it would be admissible under the applicable rules of evidence as if the deponent were present and testifying.

(2) *Over objection.* Notwithstanding any objection, all or part of a deposition may be used at a hearing against a party on these conditions:

(i) The party was present or represented at the taking of the deposition or had reasonable notice of it;

(ii) It is used to the extent it would be admissible under the applicable rules of evidence if the deponent were present and testifying; and

(iii) The use is allowed by paragraphs (a)(3) through (9) of this section.

(3) *Impeachment and other uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the applicable rules of evidence.

(4) *Deposition of party, agent, or designee.* An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under § 18.64(b)(6) or § 18.65(a)(4).

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(5) *Deposition of expert, treating physician, or examining physician.* A party may use for any purpose the deposition of an expert witness, treating physician or examining physician.

(6) *Unavailable witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the judge finds:

(i) That the witness is dead;

(ii) That the witness is more than 100 miles from the place of hearing or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(iii) That the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(iv) That the party offering the deposition could not procure the witness's attendance by subpoena; or

(v) on motion and notice, that exceptional circumstances make it desirable—in the interests of justice and with due regard to the importance of live testimony in an open hearing—to permit the deposition to be used.

(7) *Limitations on use*—(i) *Deposition taken on short notice.* A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under § 18.52(a)(2) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

(ii) *Unavailable deponent; party could not obtain a representative.* A deposition taken without leave of the judge under the unavailability provision of § 18.64(a)(2)(i)(C) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain a representative to represent it at the deposition.

(8) *Using part of a deposition.* If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(9) *Deposition taken in an earlier action.* A deposition lawfully taken may be used in a later action involving the